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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**Finance Docket No. 35175**

**ROSEBURG FOREST PRODUCTS CO., TIMBER PRODUCTS  
COMPANY, LC, SUBURBAN PROPANE, LP, COWLEY D&I., INC.,  
SOUSA AG SERVICE, AND YREKA WESTERN RAILROAD  
COMPANY-ALTERNATIVE RAIL SERVICE-CENTRAL  
OREGON&PACIFIC RAILROAD, INC.**

**Ex Parte No. 346 (sub-No. 25C)**

**RAIL GENERAL EXEMPTION AUTHORITY-PETITION FOR  
PARTIAL REVOCATION OF COMMODITY EXEMPTION-  
LUMBER OR WOOD PRODUCTS**

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**REBUTTAL OF  
WEST TEXAS AND LUBBOCK RAILWAY COMPANY**

**Respectfully Submitted,**

**John D. Heffner  
John D. Heffner, PLLC  
1750 K Street, N.W.  
Suite 200,  
Washington, D.C. 20006  
(202) 296-3334**

**Dated: September 8, 2008**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**Finance Docket No. 35175**

**ROSEBURG FOREST PRODUCTS CO., TIMBER PRODUCTS  
COMPANY, LC, SUBURBAN PROPANE, LP, COWLEY D&L, INC.,  
SOUSA AG SERVICE, AND YREKA WESTERN RAILROAD  
COMPANY-ALTERNATIVE RAIL SERVICE-CENTRAL OREGON  
& PACIFIC RAILROAD, INC.**

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**REBUTTAL OF  
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**INTRODUCTION**

On August 25, 2008, Petitioners Roseburg Forest Products Co.,  
Timber Products Company, LC, Suburban Propane, LP, Cowley D&L, Inc.,  
Sousa AG Service, and Yreka Western Railroad Company<sup>1</sup> petitioned the

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<sup>1</sup> Collectively "the Petitioners"

provide rail service over the UP-owned segment between Black Butte and Belleview, the authorization should be contingent on WTL entering into an agreement with UP covering its use of that segment.

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: September 5, 2008

A handwritten signature in black ink, appearing to read 'Edwin E. Ellis', written over a horizontal line.

[signature]

EDWIN E. ELLIS

Board for an order under 49 CFR 1146 requiring alternative rail service (“ARS”) to enable West Texas and Lubbock Railway Company (“WTL”) in conjunction with Yreka Western Railroad Company (“YWR”) to provide rail service to Petitioners over a line of Central Oregon & Pacific Railroad, Inc. (“CORP”) The ARS would extend between CORP’s interchange with the Union Pacific Railroad (“UP”) at Black Butte, CA, and Dillard, OR, a distance of approximately 218 miles. In addition, Petitioners Roseburg Forest Products Co and Timber Products Company sought a partial revocation under 49 U.S.C. 10502(d) and 49 CFR 1121.4(f) of the commodity exemption for rail transportation of lumber and wood products to enable the Board to entertain this ARS Petition as applied to rail shipments of those products.

CORP and its corporate owner RailAmerica, Inc. (“RA”)<sup>2</sup> filed a response on September 3, as supplemented on September 4. As pertinent here, CORP asked the Board to hold this proceeding in abeyance for 15 days to permit the parties to negotiate a voluntary agreement for the Petitioners to be able to replace CORP’s service with a service to be provided by WTL. Consistent with the Board’s regulations at 49 CFR 1146.1(b) (3) WTL is filing this rebuttal in conjunction with that being submitted today by the

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<sup>2</sup> Collectively referred to as “CORP”

Petitioners. In support of its rebuttal WTL submits the verified statement of its President Edwin E. Ellis.

### **ARGUMENT**

The Board's regulations for ARS require the Petitioner to provide:

- (i) A full explanation, together with all supporting evidence, to demonstrate that the standard for relief contained in paragraph (a) of this section is met;
- (ii) A summary of the petitioner's discussions with the incumbent carrier of the service problems and the reasons why the incumbent carrier is unlikely to restore adequate rail service consistent with current transportation needs within a reasonable period of time;
- (iii) A commitment from another available railroad to provide alternative service that would meet current transportation needs (or, if the petitioner is a railroad and does not have an agreement from the alternative carrier, an explanation as to why it does not), and an explanation of how the alternative service would be provided safely without degrading service to the existing customers of the alternative carrier and without unreasonably interfering with the incumbent's overall ability to provide service; and
- (iv) A certification of service of the petition, by hand or by overnight delivery, on the incumbent carrier, the proposed alternative carrier, and the Federal Railroad Administration. 49 CFR 1146.1

Inasmuch as the Petitioners' rebuttal will address items (i), (ii), and (iv) of these requirements, WTL will limit its rebuttal filing to the issue of its Commitment to provide service for Petitioners without degrading service to

its existing customers and without unreasonably interfering with CORP's overall ability to provide service.

WTL had previously committed to providing ARS for the Petitioners in the August 25 Petition so there is no need to repeat that commitment. As CORP does not question that matter, no further discussion is required here.

CORP uses its September 3 Reply to question WTL's competence and ability to provide ARS over the Black Butte-Dillard Line. Specifically, CORP argues that the ARS that WTL provided for PYCO Industries, Inc , in those proceedings<sup>3</sup> involving fewer than 14 miles of flat track in Texas does not qualify it to provide ARS on 218 miles of track in the mountainous terrain of this line, that WTL has not explained how it could provide ARS over CORP's line without *degrading service to its existing customers located in Texas*; questions WTL's ability to provide ARS without the use of experienced CORP employees and appropriate locomotive types that are alleged to be unavailable for its proposed ARS; that Mr. Ellis' prior job experience in the areas of information technology and car supply with a former owner of CORP does not qualify him to operate a mountainous railroad with severe weather conditions; and that WTL's experience achieving operating protocols with another carrier came as a result of STB-imposed and enforced measures rather than agreed upon protocols. Finally, not merely content to challenge WTL's ability and experience in providing ARS, CORP devotes the remainder of its presentation to an unprecedented request for advance compensation based upon a claim that WTL's corporate owners [Iowa Pacific Holdings, LLC, and Permian Basin Railway, Inc ] have sometimes been late in making payments on a note owed to RA

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<sup>3</sup> PYCO Industries, Inc —Alternative Rail Service—South Plains Switching, Ltd. Co., STB Finance Docket Nos. 34802 (decisions served Jan. 26, Feb. 16, Feb. 24, and June 21, 2006)

In response, CORP would have the Board believe that ARS Petitions have been granted on numerous occasions so that WTL's sole experience with the petition granted in the Pyco case should be discounted. WTL notes that, to the best of its knowledge, the Board has only granted ARS relief on two other occasions, one involving a "cooperative" situation where the incumbent railroad agreed in advance to the Petition.<sup>4</sup> Accordingly, the Board will recognize that WTL has more experience with ARS than *any other* [emphasis supplied] railroad in the country. Moreover, to date there has never been a situation involving the grant of ARS over a mountainous line with severe winter weather conditions. And as WTL's Edwin Ellis relates in his statement, WTL's sister company, San Luis & Rio Grande Railroad, a former RA subsidiary, has gradients, curvatures, and operating conditions that are very similar to those on the CORP. Moreover, as Mr. Ellis notes, he will furnish train crews and a manager that are mountain-railroad qualified and has arranged to lease SD40-2 locomotives similar to those employed by the CORP. Ellis VS at 1-2. While CORP questions WTL's ability to provide service on the Black Butte-Dillard Line without affecting service to its customers back in Texas, it fails to elaborate on this point. WTL has previously noted in the August 25 Petition there would be no effect at all insofar as its other lines in Texas are over 1,000 miles distant from the Black Butte-Dillard Line.

WTL believes that a grant of ARS will have little to no impact on CORP operations between Black Butte and Dillard inasmuch as Petitioners believe that the Petitioning shippers are the *only* [emphasis supplied] rail customers between Black Butte, CA, and Ashland, OR. As such, there would be no need for CORP to operate between these two points if ARS is

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<sup>4</sup> Denver Rock Island Railroad—Alternative Rail Service—Lines of Kansas Southwestern Railway, L.L.C., STB FD No. 33762, served July 14, 1999.



granted and therefore no impact on its operations. As to the segment between Dillard and Ashland, CORP represents that it is providing service four to five times per week. CORP Reply at 7. WTL is used to providing service under an operating protocol as it did in the Pycu case and would do so here. The fact that CORP has suggested a negotiated solution with WTL to provide ARS shows that it can be done.

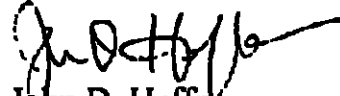
CORP concludes its rebuttal with an unusual request. It questions WTL's "financial responsibility" to provide ARS because of some late payments on a note to RA. Mr. Ellis states he believes that WTL's corporate parent, Iowa Pacific, is now current on its obligations but also notes that RA itself is consistently behind in paying IPH-owned railroad fees for storing locomotives on IPH-owned lines. Ellis VS at 2. In view of the fact that CORP cites no authority for its unusual request, there is no basis for the Board to ask Petitioners or WTL to provide compensation in advance. Finally, in response to CORP's request, WTL is agreeable to indemnifying CORP for its operations over the Black Butte-Dillard Line and providing insurance protecting CORP.

On August 29, 2008, UP filed a comment in this proceeding requesting that WTL enter into an agreement with it for the lease of its line between Black Butte and Belleview. WTL is agreeable.

### CONCLUSION

WTL believes that it has satisfied the standards for 49 CFR 1146 for relief and requests that the Petition for Alternative Rail Service be granted without delay.

Respectfully Submitted,



John D. Heffner

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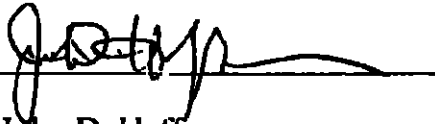
Washington, D.C. 20006

(202) 296-3334

Dated: September 8, 2008

CERTIFICATE OF SERVICE

I, John D. Heffner, certify that I have this 8<sup>th</sup> day of September, 2008, served a copy of the Rebuttal of West Texas And Lubbock Railway Company upon counsel for all parties to this proceeding, by first class United States mail and by email.



John D. Heffner

**VERIFIED STATEMENT  
OF EDWIN E. ELLIS**

Edwin E. Ellis, being duly sworn, deposes and states as follows.

My name is Edwin E. Ellis. I am President of Iowa Pacific Holdings, LLC ("Iowa Pacific Holdings" or "IPH") and its wholly-owned subsidiary, Permian Basin Railways, Inc. ("Permian"). I am the same individual who previously submitted testimony in connection with the Petition for Alternative Rail Service filed by Petitioners Roseburg Forest Products Co., *et al*, on August 25, 2008 in Finance Docket No. 35175.

I have read the Reply submitted by the Central Oregon & Pacific Railroad, Inc. ("CORP") and submit the following rebuttal. As the Board will recall, West Texas & Lubbock Railway ("WTL") is a subsidiary of Permian Basin Railways and Iowa Pacific Holdings. The railroads owned by Permian have common management. Another railroad in the group, San Luis and Rio Grande Railroad ("SLRG"), also purchased from RailAmerica, Inc. ("RailAmerica") has very similar gradients and curvatures as the CORP Siskiyou line. SLRG operates daily freight and seasonal passenger service over this mountainous railroad, and Permian's management is quite familiar, as RailAmerica knows, with mountain operations. Permian/WTL will send mountain-qualified operating crews and a mountain-qualified manager for

the alternative service operation WTL has arranged to lease SD40-2 locomotives similar to those used by CORP for use on the mountain

Regarding the RailAmerica/CORP statement about Iowa Pacific Holdings being some payments behind on a note, while it is true that from time to time payments have been late, at this point in time IPH believes it is current on its payments. However, RailAmerica has been storing locomotives on IPH railroads and is many months behind in the storage payments to IPH on those locomotives, despite repeated submission of bills to RailAmerica. IPH is of the view that it will continue to work with RailAmerica on this delinquency

At the time the CORP shippers and Yreka Western Railroad contacted WTL about its willingness to participate in the Alternative Rail Service process, WTL offered to contact RailAmerica to see if it would be willing to transfer to it the lease between Union Pacific Railroad ("UP") and CORP the leased portion of the line between Black Butte, CA, and Belleview, OR. During those brief and unsuccessful negotiations, I attempted to convey to RailAmerica officials the view that many CORP customers were dissatisfied with CORP's service. Finally, it is my understanding that while UP Railroad is unwilling to assign to WTL the existing CORP/UP lease, UP has advised the Board that in the event that the Board authorizes WTL to